TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 76.

ULYSSES S. G. WHITE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JUNE 15, 1900.

(18,588.)

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SUPREME COURT OF THE UNITED STATES.

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No. 75.

ULYSSES S. G. WHITE, APPELLANT,

vs.

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APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 19, 1903.

1 In the Court of Claims.

ULYSSES S. G. WHITE
v.
THE UNITED STATES. } No. 22495.

I.—*Petition.*

(Filed January 30, 1901.)

To the honorable the Court of Claims:

The claimant, Ulysses S. G. White, respectfully represents:

The claimant was on the 9th day of January, in the year 1877, appointed from civil life as a civil engineer in the navy.

By reason of prior service he was under the provisions of the acts of August 5, 1882, and March 3, 1883, 22 Stat. L. 287, 472, and 1 Supp. R. S. 401, allowed the maximum pay of his grade from May 19, 1885, and has since continued to receive the same.

By a portion of section 13 of the naval personnel act of March 3, 1899, 2 Supp. R. S. 973, it is provided as follows:

"That all officers, including warrant officers, who have been or may be appointed to the navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service."

Under this provision the claimant has become entitled to receive the maximum pay of his grade from the 19th day of May, 1880, instead of the 19th day of May, 1885 as well as to receive pay as of a higher longevity period from the date of appointment to the 19th day of May, 1880. The difference of pay thus due him is as shown by the following statement:

2 Amount of pay due under above-quoted provision:

3 years and 130 days at $3,000 per annum...	$10,068.49	
5 years at $3,500 per annum.....	17,500.00	
Total.....		$27,568.49
Amount of pay received:		
3 years and 130 days at $2,700 per annum.....	$9,061.64	
5 years at $3,000 per annum.....	15,000.00	
Total.		24,061.64
Balance due.....		$3,506.85

which amount he claims.

The claimant has made application to the accounting officers of the Treasury for the payment of this claim, but the auditor for the

Navy Department, under date of March 23, 1899, decided that he was not entitled to the same, and upon this construction being submitted to the Comptroller of the Treasury that officer, on the 21st day of April, 1899, affirmed the decision of the auditor.

No other action than as aforesaid has been had on this claim in Congress or by any of the departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant claims three thousand five hundred and six dollars and eighty-five cents ($3,506.85).

GEORGE A. & WILLIAM B. KING,
Attorneys for Claimant.

STATE OF OHIO, }
County of Brown, } *ss:*

Ulysses S. G. White, being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

U. S. G. WHITE.

Subscribed and sworn to before me this 28th day of January, 1901.

[SEAL.] ROBERT E. CAMPBELL,
Probate Judge.

3 II.—*Traverse. Filed January* 28, 1902.

ULYSSES S. WHITE
v.
UNITED STATES. } No. 22495.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney General.

4 III.—*Findings of Fact and Conclusions of Law. Filed March 31, 1902.*

This case having been considered by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The claimant, Ulysses S. G. White, was on the 9th day of January, in the year 1887, appointed a civil engineer in the navy from civil life. He remained such civil engineer and was such at the time of the passage of the navy personnel act of March 3, 1899.

II.

The claimant, by reason of services in the army, amounting to six years seven months and twenty-one days, previous to his entry into the navy, reached the maximum pay of his grade, $3,500, May 19, 1885, under Revised Statutes, sections 1478, 1556. Thus the amount of pay received by him between the 9th of January, 1877, and the 19th of May, 1885, was as follows:

Three years and 130 days, at $2,700 per annum	$9,061.64
Five years at $3,000 per annum	15,000.00
Total	24,061.64

If he were, upon the date of his appointment, credited for computing his pay with five years' service, and entitled to be paid from that date, he would receive pay at the following rates:

Three years and 130 days, at $3,000 per annum	$10,068.49
Five years, at $3,500 per annum	17,500.00
Total	27,568.49

or $3,506.85 more than he has previously received.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is not entitled to recover, and his petition is dismissed.

5 IV.—*Opinion of the Court.*

PEELLE, *J.*, delivered the opinion of the court:

The question in this case is the same which was involved in the Royce case, decided adversely to claimant at the present term of court (37 C. Cls. R., —), and but for the earnestness and ability with

which the claimant's counsel contends that the court erred in applying the rules it did in the interpretation of the statute, upon which the claimant bases his right to recover, we should let this case follow the Royce case without comment.

The statute referred to is section 13 of the act of March 3, 1899 (30 Stat. L., 1004, 1007), and reads as follows:

"That, after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army: *Provided*, That such officers when on shore duty shall receive the allowances, but fifteen per centum less pay than when on sea duty; but this provision shall not apply to warrant officers commissioned under section twelve of this act: *Provided further*, That when naval officers are detailed for shore duty beyond seas they shall receive the same pay and allowances as are or may be provided by or in pursuance of law for officers of the army detailed for duty in similar places: *Provided further*, That naval chaplains who do not possess relative rank shall have the rank of lieutenant in the navy; and that all officers, including warrant officers, who have been or may be appointed to the navy from civil life shall, on the day of appointment, be credited, for computing their pay, with five years' service. And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed: *And provided further*, That no provision of this act shall operate to reduce the present pay of any commissioned officer now in the navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law: *And provided further*, That nothing in this act shall operate to increase or reduce the pay of any officer now on the retired list of the navy."

The claimant grounds his right to recover the difference between the pay he received under Revised Statutes, section 1556, during his first five years' service, and the amount he now claims, under the third proviso to the act quoted.

In the construction of that proviso, in connection with the section and the purpose of the act as we conceive it, the court in the Royce case reached the conclusion that the words "after June thirtieth, eighteen hundred and ninety-nine," were intended by the Congress to apply to all the officers mentioned in the section.

But in the Royce case, as in this, the claimant was receiving his maximum pay long before the act was passed, and so whether the claimant's rights became consummate upon the approval of the act or after June 30, 1899, is immaterial in this case.

In reaching the conclusion in that case, we did not intend to depart from the well-known rule of interpretation that the province of the court "is to declare what the law is, and not, under the guise of

6 interpretation or under the influence of what may be surmised to be the policy of the Government, so to depart from sound rules of construction as in effect to adjudge that to be law which Congress has not enacted as such." (*Dewey v. United States*, 178 U. S., 521.)

We endeavored to follow the meaning of the language in the setting which the Congress gave—*i, e.*, to construe the proviso not independently of the purpose of the act, or of the section of which it forms a part, but in connection therewith—and while the construction we gave, if sustained, will operate to give increased pay to all officers of the navy appointed from civil life who were not receiving their maximum pay on June 30, 1899, it will exclude those who were receiving their maximum pay on that date.

Had the proviso omitted the words "who have been," then only those thereafter appointed would have been entitled to the increased pay, while those appointed less than five years prior thereto would have received less pay than those thereafter appointed.

The words, we think, are satisfied by construing them as applying to all those officers theretofore appointed from civil life who were not on June 30, 1899, receiving their maximum pay, and this, we still think, was the purpose and intent of the Congress, and this conclusion we reached, not as counsel say, by "rules of interpretation based on considerations outside the terms of the statute," but from the language used in connection with the whole section and evident purpose of the act.

The subject-matter of the proviso in question pertains to the rank of chaplains and to the basis for computing the pay of "all officers, including warrant officers, who have been or may be appointed to the navy from civil life;" and the purview or body of the section refers to the pay of "commissioned officers of the line of the navy and of the medical and pay corps," many of whom—nearly all from the medical corps—were appointed from civil life, while the chaplains, the majority of the professors of mathematics, nearly all the civil engineers, and other officers were appointed from civil life.

So that the language of the proviso "all officers * * * who have been or may be appointed to the navy from civil life" clearly includes those officers mentioned in the body of the section who were appointed from civil life.

If, therefore, the claimant's contention should prevail, those officers so appointed whose pay was increased after June 30, 1899, by assimilation to army pay, would, in addition thereto, be entitled to receive from the date of appointment a gratuity of five years' additional pay, thereby fixing in the same section two distinct dates for the beginning of the pay of the same officers. We can not believe that the Congress so intended.

The purpose of the act as expressed in the title thereto is "An act to reorganize and increase the efficiency of the personnel of the navy and Marine Corps of the United States;" and while the body of an act can not be controlled or restrained by the title, it may be referred to in connection with the language of the act to as-

certain the meaning of the statute where the language is susceptible of different constructions. (*Church v. United States*, 143 U. S., 457–462.)

It can hardly be contended that the payment of a gratuity has anything to do with the reorganization or the increase of the efficiency of the personnel of the navy.

An analysis of the statute shows that the purposes were to transfer the officers constituting the Engineer Corps to the line of the
7 navy, defining their duties and how they shall take rank; defining the active list of the line of the navy, retirement of officers, the pay of the officers of the line and of the medical and pay corps; fixing the basis for the payment of officers appointed from civil life; repealing the prize and bounty laws; fixing the term of enlistment of enlisted men; providing for their retirement; defining the active list of the line officers of the Marine Corps and how vacancies therein shall be filled, and what officers shall constitute the staff, etc., and repealing all acts in conflict therewith.

We must presume that the Congress were familiar with the rules relating to the construction of statutes; and in this connection the first thing to notice is that the presumption is against retrospective legislation. It is not looked upon with favor and should not be applied where the language used is susceptible of another meaning. (Southerland on Statutory Construction, sec. 463 *et seq.;* Endlich on the Interpretation of Statutes, sec. 210 *et seq.*)

Or, as we said in the Royce case, "Even though the language used would seem upon other principles of interpretation to require retroactive construction, yet in the absence of a clearly expressed intent to the contrary the presumption is against it." (Endlich on the Interpretation of Statutes, sec. 272 *et seq.*)

In the case of *Murray v. Gibson* (15 How., 422–423), concerning the construction of a statute in Mississippi limiting suits on judgments recovered out of that State, holding that such statute did not apply to judgments recovered before its passage, the court said: "As a general rule, for the interpretation of statutes, it may be laid down that they never should be allowed a retroactive operation where this is not required by express command or by necessary or inevitable implication. Without such command or implication they speak and operate upon the future only." *Harvey v. Tyler* (2 Wall., 328–347); *United States v. Alexander* (12 Wall., 177–179); *Twenty Per Cent. Cases* (20 Wall., 179–187), and *United States v. Moore* (95 U. S., 760–763).

In the case of *United States v. Burr* (159 U. S., 78–87), involving the construction of section 1 of the tariff act of 1894, which took effect August 28, 1894, providing that on and after the 1st day of August, 1894, there *shall* be levied, collected, and paid upon articles imported from foreign countries the rates of duties therein prescribed, the court, in the construction of that section, and the similar language in section 2, as to what articles shall be exempt from duty, held that "in our judgment the word 'shall' spoke for the future and was not

intended to apply to transactions completed when the act became a law."

In the case of *United States v. Moore* (*supra*) the court says: "A thing may be within the letter of the statute and not within its meaning; and it may be within the meaning though not within the letter."

And so in the present case, while the words of the third proviso of section 13 standing alone might justify the construction for which the claimant contends, yet considering the purpose of the act and the language of the section of which the proviso is a part, we think the meaning is that after June 30, 1899, "all officers, including warrant officers, who have been or may be appointed to the navy from civil life shall, on the day of appointment, be credited, for computing their pay, with five years' service," thereby fixing the beginning of the pay of all officers so appointed after June 30, 1899.

For the reasons we have given the petition is dismissed.

8 V.—*Dissenting Opinion.*

WELDON, *J.*, dissents:

I do not concur in the result reached by the court in this case, and express the reasons of my dissent briefly:

It is said in the second clause of finding II that "if he were, upon the date of his appointment, credited, for computing his pay, with five years' service, and entitled to be paid from that date, he would receive pay at the following rates:

Three years and 130 days, at $2,700 per annum.....	$10,068.49
Five years, at $3,500 per annum.....	17,500.00
Total.....	27,568.49

or $3,506.85 more than he previously received."

The statute upon which the claimant bases his right to recover, and which is quoted at length in the opinion of the court, is in the third proviso, as follows: "*Provided, further*, That naval chaplains who do not possess relative rank shall have the rank of lieutenant in the navy; and that all officers, including warrant officers, who have been or may be appointed to the navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service." The words of this proviso are a clear and unequivocal declaration, upon which is based the right of the claimant. They need no interpretation or construction, and are a plain indication by apt and unambiguous words as to the measure of pay.

In the case of *Dewey v. The United States*, in the Supreme Court and in this court the rule of judicial authority in the application of a statute is stated, and applying the law of that case to this case warrants, in my opinion, the allowance of the claim of the plaintiff, as indicated in the second paragraph of finding II. *Dewey v. United States* (178 U. S., 521); *Dewey v. United States* (35 C. Cls. R., 172).

While retrospective legislation is not to be presumed, the words employed by the legislature must be given their ordinary and logical effect. The intent of the legislature "appears by an unavoidable implication," and fulfills the strict rule as to retroactive operation prescribed by Mr. Justice Miller in the case of *Schench v. Peay* (1 Woolworth's Rep., 175). As is quoted in the case of *Jaeger v. The United States* (27 C. Cls. R., 278), "the clearest guide to the meaning of a statute is the statute itself. If words are plain there is no room for construction or an interpretation." For these brief reasons I dissent from the conclusion reached in this case.

9 VI.—*Judgment of the Court.*

ULYSSES S. G. WHITE
v.
THE UNITED STATES. } No. 22495.

At a Court of Claims held in the city of Washington on the 31st day of March, 1902, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the defendants, and do order, adjudge, and decree that the petition of the claimant, Ulysses S. G. White, be dismissed.

BY THE COURT.

VII.—*Application for and Allowance of Appeal.*

ULYSSES S. G. WHITE
v.
THE UNITED STATES. } No. 22495.

Now comes the claimant, Ulysses S. G. White, and appeals to the Supreme Court of the United States from the judgment of this court, entered on the 31st day of March, 1902, dismissing his petition, and moves for an allowance of this appeal.

GEORGE A. & WILLIAM B. KING,
Attorneys for Claimant.

Filed June 4, 1902.
Ordered that this appeal be allowed as prayed for.

BY THE COURT.

June 4, 1902.

10 Court of Claims.

ULYSSES S. G. WHITE
v.
THE UNITED STATES. } No. 22495.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law filed by the court, of the opinion of the court, of the dissenting opinion, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims. In testimony whereof, I hereunto set my hand and affix the seal of said Court of Claims, this 11th day of June, 1902.

JOHN RANDOLPH,
Ass't Clerk, Court of Claims.

Endorsed on cover: File No. 18,588. Court of Claims. Term No. 75. Ulysses S. G. White, appellant, *vs.* The United States. Filed June 17", 1902.